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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,860	10/25/2001	David E. Barker	33-XZ-6082	9981

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EXAMINER

CONLEY, FREDRICK C

ART UNIT PAPER NUMBER

3673

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,860

Applicant(s)

BARKER ET AL. *25*

Examiner

Fredrick C Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7, 9-11, 14, 16, 19 and 21 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 5, 6, 12, 13, 15, 17, 18 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7, 9-11, 14-16, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,542,138 to Williams et al.

Claim 1, Williams discloses a patient table comprising:

a patient support surface 10 for supporting a patient during a medical procedure;
a base 12 supporting said patient support surface',
a monitor 70 displaying medical information relating to a medical procedure;
a pivot arm 20 having a first end connected to said base and a second end connected to said monitor; and

a pivot release member provided on one of said monitor and said pivot arm for releasably securing said monitor and said pivot arm at predetermined angular positions with respect to said base (col. 6 lines 8-10);

wherein said patient table comprises a patient support surface which will support a patient in at least two examination positions for a medical procedure, said pivot arm orienting said monitor in a first predetermined angular position parallel to the longitudinal axis of the table and another position at a second predetermined angular position perpendicular to the longitudinal axis of the table.

Claim 4, wherein said pivot arm further comprises a fixed arm connected to said first end of said pivot arm and to said base (fig. 1).

Claim 7, With regards to the patient table being a urological table, the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 9, wherein said patient table comprises a patient support surface which will support a patient in at least two examination positions, said pivot arm orienting said monitor at a predetermined angular position facing a side of the patient support surface and a second predetermined angular position facing an end of the patient support surface (col. 1 lines 53-54).

Claim 10, wherein said pivot arm is a moving mechanism.

Claim 11, Williams discloses a table comprising:

a patient support surface 10 with opposed ends along a longitudinal axis with opposed sides transverse to said longitudinal axis;

a monitor 70 displaying medical information relating to a medical procedure,

a movable support member 20 having a first end mounted to said patient support surface and a second end mounted to said monitor, at least one of said ends being movable relative to a corresponding one of said monitor and patient support surface to move said monitor between a first and second viewing positions, said monitor facing one of said sides when in said first viewing position, said monitor facing one of said ends when in said second viewing position wherein said monitor is over said patient in

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said second viewing position. The term urology does not structurally distinguish the invention from the prior art. Since the prior art is capable of being used as a urology table it anticipates the claim.

Claim 14, wherein said movable support member comprises a fixed arm and a pivot arm (fig. 1).

Claim 15, wherein said urology table further comprises a release control remotely located that releases said movable support member.

Claim 16, Williams discloses a table comprising:

a patient support surface 10 supporting a patient in at least two positions, a first position where the patient is lying horizontally on the patient support surface and the second position where the patient is sitting up vertically (col. 2 lines 44-50);

a monitor 70 displaying medical information relating to a medical procedure,

a movable support member 20 having a first end mounted to said patient support surface and a second end mounted to said monitor, at least one of said ends being movable relative to a corresponding one of said monitor and patient support surface to move said monitor between a first and second viewing positions, in a first viewing position said monitor facing one direction when the patient is vertical, and in said second viewing position said monitor facing perpendicular to said first viewing position when the patient is horizontal,

wherein said monitor is over said patient in said second viewing position (col. 1 lines 52-59). The term urology does not structurally distinguish the invention from the

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prior art. Since the prior art is capable of being used as a urology table it anticipates the claim.

Claim 19, wherein said movable support member comprises a fixed arm and a pivot arm (fig. 1).

Claim 21, wherein said monitor is over said patient in said second predetermined position.

Allowable Subject Matter

Claims 2-3, 5-6, 12-13, 15, 17-18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 8/26/04 have been fully considered but they are not persuasive.

In reference to the Applicant's recitation "for supporting a patient during a medical procedure" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

With regards to the patient table being a urological table, the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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Furthermore, the table of Williams clearly can support a patient lying on their back and sitting up.

Contrary to the Applicant's argument, Williams does disclose the monitor capable of displaying medical information relating to a medical procedure. Williams discloses the monitor displaying a patient's chart. A patient's chart inherently contains medical information relating to the patient and any medical procedures that are performed while under the care of hospital staff thus the monitor of Williams is clearly capable of displaying medical information relating to a medical procedure. The monitor of Williams also allows hospital staff to access medical information stored within the memory of a microprocessor from a remote access (col. 3 lines 49-54)(col. 4 lines 14-34) therefore the patient's medical information is capable of being accessed from a remote location during diagnostic testing or surgery.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL F. TRETTEL
PRIMARY EXAMINER
ART UNIT 358